

Montana Water Court
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FILED
04/20/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0351-R-2021
Lambert, Kathryn
5.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Patrick Ondrus; Sarah Ondrus

CASE 43B-0351-R-2021
43B 193925-00
43B 193926-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claims 43B 193925-00 and 43B 193926-00 each appeared in the Preliminary Decree with the following issue remark:

THE LEGAL LAND DESCRIPTION FOR POINTS OF DIVERSION NO. 1 AND 2 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THE CLAIMED POINTS OF DIVERSION CANNOT BE CONFIRMED.

The issue remarks were not addressed and resolved during the objection process. The Legislature has directed the Water Court to resolve the issue remarks using the procedures set forth in section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark. In order to give the claimants an opportunity to file additional evidence to resolve the issue remarks, an Order Consolidating Case and Setting Filing Deadline was issued on February 1, 2021 setting a March 15, 2021 filing deadline. Nothing was filed.

The March 25, 2021 Order Setting Deadlines Pursuant to 85-2-248(5), MCA was issued directing the claimants to contact the Montana Department Of Natural Resources and Conservation ["DNRC"] for assistance with addressing and resolving the issue remarks. The deadline for the claimants to file their documentation was June 7, 2021. Nothing was filed by the claimants. On June 9, 2021 the DNRC filed a No Response Memorandum stating that claimants Patrick Ondrus and Sarah Ondrus did not contact the DNRC. It states that without additional information from the claimants, it cannot make any recommendations to resolve the issue remarks. The Service List states that the No Response Memorandum was mailed to Patrick Ondrus and Sarah Ondrus. The No Response Memorandum did not prompt any response from Patrick Ondrus and Sarah Ondrus.

The February 14, 2023 Order Entering Defaults and Order Setting Filing Deadline Pursuant To Section 85-2-248(9)(a), MCA states:

As Patrick Ondrus and Sarah Ondrus did not comply with the February 1, 2021 Order Consolidating Case And Setting Filing Deadline and did not comply with the March 25, 2021 Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA, pursuant to Rule 55(a), M.R.Civ.P. and Rule 22, W.R.Adj.R., it is

ORDERED that the defaults of Patrick Ondrus and Sarah Ondrus are ENTERED.

Judicial notice is taken of the proceedings in Case 43B-0352-R-2021 concerning the United States of America (USDA Forest Service) objection to another Patrick Ondrus and Sarah Ondrus Eagle Creek claim, 43B 194582-00. Rule 202(4) and (6), M.R.Evid R. The Preliminary Decree for all three claims states that the point of diversion in section 24, T9S, R8E is in the NWSENE. In Case 43B-0351-R-2021 (sic), the legal description was changed to the NESWNE

section 24, T9S, R8E.

For claims 43B 193925-00 and 43B 193926-00, the Preliminary Decree states that the points of diversion for each claim are:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NWSENE	24	9S	8E	PARK
SENE	23	9S	8E	PARK

As the claimed point of diversion in section 23 has not been confirmed at all, the point of diversion in section 23 should be removed from both claims. However, it appears the legal description for the point of diversion in section 24 should be modified as was done in Case 43B-0351-R-2021 (sic). For both claims, it appears the point of diversion should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NESWNE	24	9S	8E	PARK

Pursuant to 85-2-248(9)(a), MCA, it is ORDERED that the deadline for claimants Patrick Ondrus and Sarah Ondrus to show cause in writing why the Court should not proceed with amending claims 43B 193925-00 and 43B 193926-00 as described above pursuant to section 85-2-248(9)(a), MCA, is **March 14, 2023**. If no additional information is filed by this deadline, the Court will proceed with amending the claims as detailed above.

Nothing was filed. The Orders are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

Judicial notice is taken of the proceedings in Case 43B-0352-R-2021 concerning the United States of America (USDA Forest Service) objection to another Patrick Ondrus and Sarah Ondrus Eagle Creek claim, 43B 194582-00. Rule 202(4) and (6), M.R.Evid R.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDING OF FACT

For each claim, the Preliminary Decree states that the point of diversion is:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NWSENE	24	9S	8E	PARK
SENE	23	9S	8E	PARK

For each claim, the point of diversion should be:

<u>QTRSEC</u>	<u>SEC</u>	<u>TWP</u>	<u>RGE</u>	<u>COUNTY</u>
NESWSE	24	9S	8E	PARK

The issue remarks should be removed as addressed and resolved.

CONCLUSION OF LAW

The information in Case 43B-0352-R-2021 concerning the same claimed point of diversion in section 24, T9S, R8E, PARK is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (9), MCA.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service Via USPS Mail:

Patrick Ondrus
Sarah Ondrus
PO Box 480
Gardiner, MT 59030

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 193925-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: PATRICK ONDRUS
PO BOX 480
GARDINER, MT 59030

SARAH ONDRUS
PO BOX 480
GARDINER, MT 59030

Priority Date: MAY 31, 1930

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 56.10 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 5 - LOW

Maximum Acres: 2.10

Source Name: EAGLE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNE	24	9S	8E	PARK

Period of Diversion: APRIL 1 TO OCTOBER 31

Diversion Means: HEADGATE

Period of Use: APRIL 1 TO OCTOBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2.10		SENE	23	9S	8E	PARK

Total: 2.10

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

193925-00

193926-00

194584-00

194585-00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 193926-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: PATRICK ONDRUS
PO BOX 480
GARDINER, MT 59030

SARAH ONDRUS
PO BOX 480
GARDINER, MT 59030

Priority Date: MAY 31, 1930
Type of Historical Right: USE
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
***Flow Rate:** 56.10 GPM
THIS RIGHT INCLUDES HIGH OR FLOOD WATERS OF EAGLE CREEK.
***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 5 - LOW
Maximum Acres: 2.10
Source Name: EAGLE CREEK
Source Type: SURFACE WATER
THIS RIGHT ALSO INCLUDES IRRIGATION AND WASTE WATER RUNOFF

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNE	24	9S	8E	PARK
*Period of Diversion:		APRIL 1 TO AUGUST 15				
Diversion Means:		HEADGATE				
*Period of Use:		APRIL 1 TO AUGUST 15				

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2.10		SENE	23	9S	8E	PARK
Total:		2.10					

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

193925-00	193926-00	194584-00	194585-00
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